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ABSTRACT

This paper reviews provisions of the Individuals with Disabilities Education Act (IDEA) and findings from court cases regarding behavioral intervention plans (BIPs) for students with disabilities. The following eight recommendations are provided for school districts as they strive to implement the behavioral intervention provisions of IDEA and meet the needs of students: (1) when school district personnel are concerned about behaviors exhibited by a student or when the student is exhibiting a pattern of behavior, it is important that the district conduct a multidisciplinary evaluation to determine eligibility for special education services; (2) all behavioral concerns should be documented in writing; (3) Individualized Education Programs should address behavioral concerns of the student; (4) the BIP should be based on the functional assessment of the student; (5) the BIP should be followed by those individuals responsible for implementation, which requires those individuals to have a copy of it; (6) the BIP should be implemented during all parts of the day and in all settings where behavior impedes learning; (7) positive behavioral interventions must be part of the BIP and should teach the child replacement behaviors; and (8) the services provided must be such that the student gains meaningful benefit. (CR)

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HERE COMES THE JUDGE: LESSONS FROM THE COURTS ON BEHAVIORAL INTERVENTION PLANS

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by Bev Johns

Functional Assessment, Behavioral Intervention Plans, Interim Alternative Educational Settings--these terms were new in the last reauthorization of the Individuals with Disabilities Education Act. It has now been four years since the passage of IDEA 97. When questions arise about the intent of any law, we look to the courts for some answers. Even though cases are fact specific, we can learn from other's mistakes and we can see trends in cases. Enough time has passed to look at interpretations of behavioral intervention plans within the judicial system. This article first reviews the basics of the law and other resources, then reviews some of the cases, and summarizes key points that educators must remember in the implementation of the provisions of behavioral intervention plans.

IDEA 97 provided that: "In the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior." (Sec. 1414). The law makes it clear that behavioral

intervention plans are not just appropriate for students with emotional/behavioral disorders, but are appropriate for students with any disability, including a speech/language disability, if behavior impedes learning. IDEA 97 also mandated positive behavioral interventions based on over 30 years of research on effective practices in working with students with behavioral challenges.

The role of the regular education teacher is now specified within the law and includes the importance of that individual's responsibility in the development of the behavioral intervention plan. The regular education teacher shall, to the extent appropriate, participate in the development of the child's IEP, including the determination of appropriate positive behavioral interventions and strategies.

Does the role of the regular education teacher imply that all students must be provided their educational services within the regular classroom? Appendix A to part 300--Note of Interpretation--provides guidance. Question 39 is answered by stating that if a child can appropriately function in the regular classroom with appropriate behavioral supports, strategies, or interventions, placement in a more restrictive environment would be inconsistent with the provision of Least Restrictive Environment. However, if the child's behavior in the regular classroom, even with the provision of appropriate behavioral

supports, strategies, or interventions would significantly impair the learning of others, that placement would not meet his or her needs and wouldn't be appropriate.

Although the presence of the term "functional assessment" has been present in the research literature for many years, especially literature that delineates the methodologies that are effective in working with individuals with developmental disabilities, it was never in Federal law. Now school district personnel must base their behavioral intervention plans on functional assessment. This is the "diagnostic-prescriptive approach" (the very basis of special education). Functional assessment is the diagnosing of the behavioral problem(s). The behavioral intervention plan is the prescription for improving the behavior. Although neither the law nor the regulations delineate the components of the functional assessment, we can look at previous literature and now at least one case that helps define it for us.

AN OVERVIEW OF SELECT CASES

Two early cases after the passage of IDEA 97 and prior to the release of the regulations were State Education Agency ones. A hearing officer in a case heard in the District of Columbia Public Schools ordered the reimbursement of a privately obtained functional behavioral assessment because the District had failed

to conduct one. (28 IDELR 401 (D.C. SEA, 1998)). In another case, a hearing officer said the district's IEP team failed to develop a functional behavioral assessment plan. The Officer stated that even though the IDEA amendments did not define the assessment, the team had failed to take sufficient steps to "understand the dimensions of the boy's behavioral problems prior to prescribing a solution in the form of counseling when he returned to school." (28 IDELR 909 (N.Y.SEA 1998)). In this case the hearing officer also rejected the IEP team's home-based program not only because of a lack of Functional Behavioral Assessment but the Interim Alternative Educational Setting did not provide the services and address the goals specified on the IEP.

In a later case in 1999 in California, a hearing officer concluded that a particular student's behavior interfered with the goals and objectives of the IEP and the district improperly failed to provide for a functional analysis assessment. The hearing officer ordered the district to reimburse parents for an assessment that they obtained from their physician. The student's behavior and actions had caused the student to miss a significant amount of class and therapy time and as a result social and behavioral development goals were rendered virtually ineffective. The district had contended that it was not required to reimburse the parents because the assessment obtained by the parent did not meet formal requirements of a functional

assessment (Moorpark Unified Sch. Dist., {33 IDELR, 1999, California}).

In a case in Pennsylvania, a gifted student who had an emotional disability had difficulty interacting with peers and made violent threats. Dissension occurred between the district and the parents about the needs of the student. The hearing officer ruled in favor of the parent because the district had annually failed to address the student's emotional and social needs. In an investigation of the child's IEP, the document only considered academic goals in his educational program. The district was required to hire a consultant to assist the school in developing an appropriate program. (Quaker Valley Sch. Dist. {31 IDELR 255}).

In another case in Pennsylvania (Wilkes-Barre Area Sch. Dist.,{32 IDELR 17}), the parent of a student wanted consideration of placement for a 16 year old ninth grader with a learning disability and ADHD in a residential treatment facility and the hearing officer ordered it. On appeal, however the district won the case. It had provided the student with a comprehensive, precise, and appropriate IEP that was reasonably calculated to provide meaningful benefit. The district had completed a reevaluation that was supplemented by a Functional Behavioral Assessment. The student refused to complete the self-monitoring part of the BIP.

One must consider within the context of the functional assessment and subsequent behavioral intervention plan, the specific disability of the student. One such case that addressed this issue originated in Indiana (Brown County Sch. Corp., {31 IDELR 200}). A 17 year old with a learning disability was recommended for expulsion due to possession of marijuana--the district said the behavior was not related to the disability. The hearing officer did not argue that the student knew right from wrong but went on to say that the student, because of the learning disability, could not always process information properly. The student's behavior was causally related to his disability and the school had failed to address he behavioral concerns in his IEP.

The law clearly intends that the behavioral intervention plan delineate positive behavioral interventions--those designed to increase appropriate behavior. A case in Iowa in 2000 upheld that premise. (Mason City Community Sch. Dist.,{32 IDELR 216]). The district had failed to consider less restrictive placements before it placed a student in an interim alternative educational setting. The behavioral intervention plan was ineffective--it appeared punitive in nature and did not teach the student appropriate behaviors.

In a complaint filed with the Office of Civil Rights (Hall County {GA} Sch. Dist., {32 IDELR 70}), in 1999, a school district was found to have not violated Section 504 of the Rehabilitation Act

by suspending the student for four days for hitting a teacher. The length of the suspension did not consititute a pattern of exclusion that required a manifestation determination. The district did agree to employ a qualified evaluator to conduct a full psychological evaluation including a behavioral assessment. The district also agreed to prepare a Behavioral Intervention Plan for the bus and to update its manual concerning behavior issues and to ensure that the student's teacher attended a workshop on autism.

A case in Corpus Christi, Texas, in 1999, stressed the importance of a continuum of alternative placements, as mandated by IDEA 97 (Corpus Christi Indep. Sch. Dist., {33 IDELR 178}). In this case the hearing officers held a district implemented a behavioral intervention plan and that placement in a self-contained Behavioral Disorders class was proper because previous attempts to control or improve the student's behavior failed. In this case the school district had attempted many modifications to the Behavioral Intervention Plan.

RECOMMENDATIONS FOR SCHOOL PERSONNEL

The following are eight recommendations for school districts as they strive to implement the behavioral intervention provisions of IDEA 97, and most importantly, strive to meet the needs of students whose behavior impedes learning.

1. When school district personnel are concerned about behaviors exhibited by a student or when the student is exhibiting a pattern of behavior, it is important that the district conduct a multidisciplinary evaluation to determine whether the student is eligible for special education services. Evaluations provide us with a better understanding of the needs of the child and determine whether the child is eligible for special education services.

2. All behavioral concerns should be documented in writing. Incidents of major behavioral problems are rarely isolated. Children with behavioral concerns have patterns of behavior that educators must be able to discern. One way of doing so is to document those behaviors and review logs of such periodically. When a behavior occurs that is cause for concern, the witness(es) to the event, should document the incident in writing, keep a copy, and pass the information along to the appropriate individuals.

3. IEPs should address behavioral concerns of the student. IDEA 97 requires a behavioral intervention plan when behavior impedes learning. The goals and objectives for the student should address behavioral concerns and should address the target behaviors delineated in the behavioral intervention plan. The present levels of performance of the student should reflect specificity of the behavioral concerns. The present levels of

performance should also delineate the relationship between the student's behavior and academic performance.

4. The behavioral intervention plan developed for the student should be based on the functional assessment of the student. Just as diagnostic information must be utilized to plan an effective specialized instructional program for the student in the area of academics (known as the diagnostic prescriptive model-the basis of special education), the diagnostic information gained from the functional assessment must be used to develop the individualized behavioral intervention plan.

5. The behavioral intervention plan should be followed by those individuals responsible for implementation--which requires those individuals to have a copy of it. If the regular education teacher(s) is responsible for some of the implementation of the plan, the teacher should be present for that discussion during the IEP. The teacher should also have a copy of the plan. If it is guarded in a locked cabinet and individuals who need to have a copy don't have one, it is very difficult to remember the exact wording of the plan.

6. The behavioral intervention plan should be implemented during all parts of the day and in all settings where behavior impedes learning. The plan may be implemented within the confines of the structured special education class but then the child may go to

the lunchroom with a mainstreamed class and act out. The functional assessment should have provided information about where problems occur and with whom those problems occur. If behavior occurs on the bus, staff must work with the bus driver and bus aide (if there is one) so that those employees understand how to implement the behavioral intervention plan, which should be a well coordinated plan with all staff who have contact with the student.

7. Positive behavioral interventions must be part of the behavioral intervention plan and should teach the child replacement behaviors. A long history of research proves that positive rather than negative interventions are effective and result in long lasting behavioral change. Yet unfortunately many schools operate on a "consequence only" basis where they apply consequences such as suspension that is very ineffective for many students. Just as we must engage in direct instruction of academics, we also must utilize direct instruction to teach students replacement behaviors. If the student throws books everytime he or she gets angry, the student must be taught anger management skills. We cannot assume that children come to school knowing how to behave. We must teach them appropriate social skills based on their needs.

8. The services provided to the student must be such that the student gains meaningful benefit. The early cases in special

education stressed the importance of assuring benefit to the child. We must develop plans that allow students to make progress. If we have developed a behavioral intervention plan that isn't working and isn't resulting in improved skills, then we need to look at why it isn't working and what revisions are needed. If a target behavior is anger management, and the student continues to get into fights within his classroom we must look at what is happening. Are we teaching the child appropriate anger management techniques? Is the setting inappropriate for the student?

IN CONCLUSION

IDEA 97 provided us with guidance on the importance of positive behavioral interventions and stressed the diagnostic-prescriptive approach to behavior through functional assessment and behavioral intervention plans. Hearing officers and judges have provided additional guidance since its passage. Lessons learned from the law and the courts should be utilized to improve services for children whose behavior impedes learning.

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